1978

Reagan Outdoor Advertising, Inc. v. Utah Department of Transportation : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

REAGAN OUTDOOR ADVERTISING, INC., a Utah Corporation,

Defendant-Appellant,

vs.

UTAH DEPARTMENT OF TRANSPORTATION,

Plaintiff-Respondent.

No. ~~23860~~ 15693

BRIEF OF APPELLANT

Appeal from the Judgment of
Second Judicial District Court,
Davis County, State of Utah
Honorable J. Duffy Palmer, Judge

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vs.	)	
	)	No. 23860
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Plaintiff-Respondent.	)	
	)	

NATURE OF THE CASE

Defendant-Appellant seeks a judicial determination of his right to continue to operate an outdoor advertising sign.

DISPOSITION IN THE LOWER COURT

The Second District Court, the Honorable Thornley K. Swan presiding, dismissed Defendant-Appellant's appeal from the decision of the Utah Transportation Commission as not being timely.

NATURE OF RELIEF SOUGHT

Defendant-Appellant seeks to have his appeal reinstated in the Lower Court.

STATEMENT OF FACTS

Nine months after a hearing before Commissioner Charles Ward of the Utah Transportation Commission on December 9, 1976, the Commission as a whole adopted a resolution declaring Defendant-

Appellant's signs to be in violation of the Utah Outdoor Advertising Act. Twenty-five days after notice of this action, on October 25, 1977, Defendant-Appellant filed his appeal in the Second District Court. That Court granted Plaintiff-Respondent's motion to dismiss on the grounds that Defendant-Appellant's appeal was not timely.

ARGUMENT

POINT I

THE DISTRICT COURT HAD JURISDICTION TO HEAR THIS APPEAL DUE TO APPELLANT'S COMPLIANCE WITH THE 30-DAY FROM NOTICE OF DECISION RULE EXPRESSLY ADOPTED BY THE UTAH DEPARTMENT OF TRANSPORTATION.

The sole issue before this court is whether or not a notice of appeal filed 25 days from Appellant's receipt of the decision of the Utah Transportation Commission complies with the letter and spirit of Utah law and will afford Appellant the opportunity to have his legal rights adjudicated by a court of law. Both this court and the Utah Department of Transportation have said it does.

In a recent case interpreting the right to appeal from the decision of the Transportation Commission, NATIONAL ADVERTISING CO. v. UTAH STATE ROAD COMMISSION, 26 U. 2d 132, 486 P. 2d 383 (1971), this court found that Rule 81(d) U.R.C.P. applied in determining the period in which an appeal can be taken from a decision of the Transportation Commission. Rule 81(d) provides that:

> "These Rules shall apply to the practice and procedure in appealing from or obtaining a review of any order, ruling or other action of an administrative board or agency, except insofar as the specific statutory procedure in connection with any such appeal or review is in conflict with these Rules."

Due to the qualifying language in the last sentence and the fact that the Legislature amended Section 27-12-136.9 U.C.A. (1953) which provides the procedure for appeal from the Transportation Commission, it might be argued that Rule 81(d) no longer applies. This deserves close scrutiny.

Previous to the amendment by the Legislature, Section 27-12-136.9 did not specify any time limit within which a party would have to appeal. It now reads as follows:

> "The decision of the commission may be appealed to the District Court in the county in which the sign is located. . . Appeals shall be taken within 30 days of the commission's decision by filing a notice of appeal and sending a copy of the notice to the commission."

This new language at the end arguably restricts the time to appeal to a 30-day period commencing with the decision of the commission. If this is so, then Appellant's appeal would have been late. However, the Transportation Commission itself has answered this argument in their Rules adopted under the Utah Administrative Rules Act. The Utah Transportation Department Regulations A88-30-1:14c dealing with appeals from hearing decisions contains the following language:

> "Notice of appeal from the Commission decision to the District Court for review shall be in writing and a copy of the Notice of Appeal shall

> be sent to the Director of the Utah Department of Transportation postmarked or filed prior to the 30th day from the Commission findings, conclusions and decision, and as provided in the Utah Rules of Civil Procedure 81(d). (Emphasis added.)

Herein the Commission has expressly adopted the holding in National Advertising and thereby made themselves subject to the holding of this court relative to the interpretation of those rules. The only remaining question is whether or not the Rules of Civil Procedure dictate a different rule from the 30-days from decision interpretation.

In the Brief filed by the Attorney General's Office in support of their motion to dismiss Appellant's appeal in the District Court it is conceded that where the Rules of Civil Procedure do apply, that Rule 73(h) is that rule in that it provides for appeals from lower tribunals to district courts. Appellant concedes that this is the proper interpretation. That Rule provides:

> "An appeal may be taken to the district court from a final judgment rendered in a city court within one month after notice of the entry of such judgment. . ."

Although the language is clear, this court expressly interpreted this language in BUCKNER v. MAIN REALTY & INS. CO., 4 U. 2d 124, 288 P. 2d 786 (1955), and found that it required a 30-day from notice appeal time. Given the application of this section to the appeal in question, Appellant's appeal filed 25 days from receipt of notice was timely, and the district court had jurisdiction to hear the appeal.

POINT II

IN THE ALTERNATIVE TO POINT I, THIS COURT SHOULD ANNOUNCE A RULE OF LIBERAL INTERPRETATION WITH REFERENCE TO APPEALS FROM ADMINISTRATIVE BODIES.

In a dissenting opinion in, MARSH v. UTAH HOMES, INC., 17 U. 2d 248, 408 P. 2d 906 (1965), Chief Justice Crockett stated the following:

> "One of the purposes of our new Rules of Civil Procedure was to eliminate rigidities which had become engrafted into procedure and to provide some degree of liberality where that is necessary to effectuate justice."

He further stated that:

> "I am both aware of and committed to the advisability generally of orderliness of procedure by adhering to rules. Nevertheless, it seems to me that it is often a mistake to attempt to see all of the law in the strict and literal application of one single statute, particularly where it results in depriving a party of a legal right or an opportunity to have it adjudicated, whereas, following other provisions of the law would avoid such an arbitrary result."

In the case of ADAMSON v. BROCKBANK, 112 U. 52, 185 P. 2d 264 (1947), this court held that the right to appeal is such a valuable right and that it is presumed to be available. As such it would be manifestly unjust for this court to deny Appellant's right to have his day in court when the path to allow this right is so clear and will only be lost if this court adopts a strained and restrictive reading of the relevant language. A liberal construction is also required by virtue of Section 68-3-2 U.C.A. (1953).

As mentioned earlier, Rule 73(h) U.R.C.P. provides for the procedure for appealing to the district courts. When compared with Rule 73(a) which deals with appeals to this court, it becomes clear that a less restrictive rule was intended. In Rule 73(a) a strict 30-day from decision rule is applied, but provision is made for relief from that strict rule due to excusable neglect. In recognition of the differences between appeals from district courts and that from less structured and formal bodies, namely the lack of dockets and the predictability of the time when a decision will be reached, Rule 73(h) adopts a 30-day from notice rule, thereby guaranteeing the losing party at least 30 days in which to perfect his appeal. Given the likewise informal procedure before the Transportation Commission there is certainly no reason to restrict the right to appeal even more harshly than that from the District Court by requiring a 30-day from decision rule and not providing any relief for failure to learn of the decision.

The facts surrounding the present case and the general procedure of the Transportation Commission underscore the need for flexibility and a liberal interpretation. As mentioned previously, it was a full nine months from the time the hearing was held before Commissioner Ward and the decision of the Commission. During that time Appellant had no way of knowing when the decision would be rendered. According to the

Commission Secretary, Ronald A. Fernley, the procedure for adopting a decision is as follows. The Commissioner who heard the case drafts a resolution which is considered by the Commission as a whole and either adopted or rejected. This decision is then forwarded to the division which supervises this area. This department then prepares the order and notifies the owner of the signs. In the present case it took nearly 14 days from the date of the decision before Appellant was notified. Given the complicated procedure outlined, this was likely very quick action and it is entirely possible that a given person would never learn of the decision until his right to appeal had run and if the statute is read restrictively the right to appeal would have been lost for failure to take independent steps to learn of the Commission's actions. Such action would be extremely difficult, however, since the decisions of the Commission are not published in any newspaper of general circulation and the Commission itself does not maintain any docket of its decisions. In the present case, the sign owner, who, by the way, was the only person notified, looked at the date of the letter notifying him of the decision, September 26, 1977, and mistakenly read the date of the decision, September 16, 1977, to be one and the same; thereby leading to the unfortunate and time-consuming process we are currently engaged in.

It is certainly apparent that the argument for greater flexibility applies with great force in the context of administrative hearings and post-hearing procedure. We are not dealing here with a court where the post-trial procedures are well defined and predictable, but rather with an area where the Legislature intended that matters be handled informally, thereby allowing the parties to iron out their differences without formal motions and rules.

Given the confusion and need for flexibility this court should hold that Appellant's appeal was timely and reinstate it in the District Court.

CONCLUSION

By virtue of the clear application of Rule 73(h) and the 30-day from notice rule therein announced when coupled with the inherent need for flexibility in hearing and post-hearing procedure when dealing with administrative bodies, this court should find that an appeal filed 25 days from the date of notice of the decision of the Utah Transportation Commission was timely and reinstate this appeal in the District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Appellant were served on STEPHEN J. SORENSON, Assistant Attorney General, Attorney for Plaintiff-Respondent, 115 State Capitol Building, Salt Lake City, Utah 84114, this _____day of _____, 1978.

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